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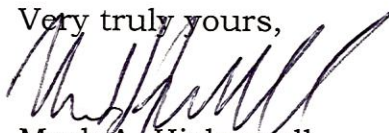
Re: American Coalition of Public Safety, (ACOPS) Local 18
and Merrimack College
NLRB Case No.: 01-RC-139931

To Whom It May Concern:

On behalf of the American Coalition of Public Safety I am enclosing for filing a Request for Review of the Regional Director's Decision and Direction of Election in the above-referenced matter.

Thank you.

Very truly yours,



Mark A. Hickernell

MAH/rw
Enclosure

cc: Jonathan B. Kreisberg, Regional Director NLRB (Via Electronic Filing)
Peter McCarron, President (Via PDF E-Mail)
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

American Coalition of Public Safety
(ACOPS) Local 18,

Petitioner,

and

Merrimack College,

Employer.

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OF THE REGIONAL DIRECTOR'S DECISION
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**REQUEST FOR REVIEW
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I. INTRODUCTION

The American Coalition of Public Safety ("ACOPS" or the "Union") requests review of the December 4, 2014 Decision and Direction of Election issued by the Regional Director of Region One in the above-captioned case pursuant to Section 102.67 of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations.

ACOPS filed a petition on October 30, 2014 seeking to represent a bargaining unit of all full-time and regular part-time campus police officers, sergeants, and dispatchers employed by Merrimack College ("College" or the

“Employer”) in North Andover, Massachusetts¹ within its Police Department (“Department”). The College objected to the inclusion of the sergeants in the petitioned-for unit, contending that they exercised supervisory authority to assign, responsibly direct, promote, discipline, and to effectively recommend firing probationary employees within the meaning of Section 2(11) of the National Labor Relations Act (“NLRA” or “Act”). On November 7, 2014, a hearing on that issue was held before Hearing Officer Gene Switzer in Boston, Massachusetts. On December 4, 2014, the Regional Director issued a Decision and Direction of Election concluding that the sergeants are statutory supervisors solely based upon a finding that the sergeants have authority to “responsibly direct” within the meaning of the Act. The Regional Director further found that all full-time, regular part-time, and on-call campus police officers, campus safety officers, and dispatchers constituted a unit appropriate for collective bargaining and ordered a secret ballot election among the employees comprising that unit. The election is scheduled for January 22, 2015.

For the reasons set forth below, ACOPS requests that the Board vacate the Regional Director’s decision as it pertains to the supervisory status of the sergeants and direct the inclusion of the sergeants in the petitioned-for collective bargaining unit.

¹ The College’s legal address is in North Andover, Massachusetts. The College’s campus, however, is split between Andover and North Andover, Massachusetts. (Tr: 14:23-25; 15:1).

II. STANDARD OF REVIEW

The Board may grant a request of review of the decision of a Regional Director only for compelling reasons. 29 C.F.R. § 102.67(c). Specifically, the Board will grant a request for review where (1) a substantial question of law or policy is raised because of the absence of, or a departure from, officially reported Board precedent; (2) the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party; (3) the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or (4) there are compelling reasons for reconsideration of an important Board rule or policy. 29 C.F.R. §§ 102.67(c)(1)-(4). Here, the first and second grounds for review apply.

III. ARGUMENT

By concluding that the sergeants possess supervisory authority, the Regional Director departed from officially reported Board precedent by applying the wrong standard of proof. In finding that the sergeants exercise independent judgment in responsibly directing employees under certain circumstances, where the Regional Director concluded that the sergeants consider the relative skills of the officers, and that the sergeants are accountable for the actions of other employees, the Regional Director relied exclusively upon conclusory testimony, unsupported by any specific details or concrete examples. The Board has consistently found that evidence of the sort

offered by the College is insufficient to satisfy an employer's burden of proving supervisory status.² For this reason, ACOPS requests that the Board grant its request for review and vacate the Regional Director's decision as it pertains to the supervisory status of the sergeants.

A. The Standard Of Proof Established By The Board Protects Important Rights By Requiring Specific, Detailed Evidence.

A review of the evidence presented at hearing shows that the Regional Director failed to apply the appropriate burden of proof in concluding that the sergeants have authority to responsibly direct within the meaning of the Act. The party asserting that an individual is a statutory supervisor has the burden to prove supervisory status³ and must establish the existence of that authority by a preponderance of the evidence.⁴ The Board construes a lack of evidence on any of the elements necessary to establish supervisory status against the party asserting that status.⁵ Evidence which is in conflict or otherwise

² Further, much of the conclusory evidence cited by the Regional Director in support of his decision that the sergeants possess authority to responsibly direct within the meaning of the Act is also clearly erroneous and unsupported by the record evidence. The erroneous facts relied on by the Regional Director in concluding that the sergeants have authority to responsibly direct will be addressed infra in discussing the Employer's failure to meet the burden of proof to demonstrate that the sergeants possess supervisory authority.

³ Oakwood Healthcare Inc., 348 N.L.R.B. 686, 687 (2006) ("The burden to prove supervisory status is on the party asserting it."); Alternate Concepts, Inc., 358 N.L.R.B. No. 38, *12 (2012).

⁴ Alternate Concepts, Inc., supra, at *12.

⁵ Brusco Tug and Barge, Inc., 359 NLRB No. 43, *18 (2012).

inconclusive does not prove supervisory status.⁶ Critically, “[m]ere inferences or conclusionary statements, without detailed, specific evidence, are insufficient to establish supervisory authority.”⁷

While establishing that an employee has supervisory status requires only proof of the authority to carry out one of the twelve supervisory functions set out in Section 2(11), and not the actual exercise of that authority, the evidence must be sufficient to show that such authority exists.⁸ The Board has “exercised caution not to construe supervisory status too broadly because the

⁶ Id.

⁷ Alternate Concepts, Inc., *supra*, at *12 (2012). See also Lynwood Manor, 350 N.L.R.B. 489, 490 (2007) (“The Board has held that purely conclusory evidence is not sufficient to establish supervisory authority.”); Sears, Roebuck & Co., 304 N.L.R.B. 193, 193 (1991) (finding “conclusionary statements made by witnesses in their testimony, without supporting evidence” insufficient to establish supervisory authority); Chevron Shipping Co., 317 N.L.R.B. 379, n.6 (1995) (finding contrary to Regional Director’s determination that evidence presented by employer was not sufficient to show that assistant engineers were supervisors on the basis of assigning and approving overtime where finding was based on two nonspecific general pieces of evidence, namely a witness’s testimony that the first engineers assign overtime and standing orders indicating that first engineers oversaw overtime work, where such evidence was conclusory, without any specific explanation that the engineers utilized independent judgment in making overtime assignments); Loyalhanna Health Care Associates, 352 N.L.R.B. 863 (2008) (finding testimony that nurse managers assign staff by determining the acuity level of residents of the floor merely conclusory and insufficient to establish the use of independent judgment where there is no evidence that the nurse managers consider the staff members’ skill sets or matched those skills to patients and also concluding that employer failed to show that nurse managers exercised independent judgment in releasing employees early where witness testified that nurse managers had done so but offered no examples).

⁸ Avante at Wilson, Inc., 348 N.L.R.B. 1056, 1057 (2006).

employee who is deemed a supervisor is denied rights which the Act is intended to protect.”⁹

B. The Regional Director Erred In Concluding That The College’s Conclusory Evidence, Lacking Any Specific Detailed Examples Of The Sergeants’ Use Of Independent Judgment, Met The Board’s Burden Of Proof For Finding Responsible Direction.

The Regional Director found that by evaluating the characteristics of individual officers, the sergeants utilize independent judgment in directing employees in certain circumstances, including investigating potential crimes; transporting arrestees to police departments; deploying officers to perform crowd control functions; and assigning officers to checkpoints and the bar area. In this section, ACOPS reviews the Board’s standards for a finding of supervisory authority on this prong, and then discusses how the Regional Director failed in each instance to apply the proper burden of proof.

The authority to responsibly direct encompasses “*ad hoc* decisions as to what job shall be undertaken next or who shall do it” where an employee utilizes independent judgment in making those decisions and the direction is also “responsible.”¹⁰ An individual does not have supervisory authority to

⁹ Oakwood Healthcare Inc., *supra*, at 687; Avante at Wilson, Inc., *supra*, at 1058.

¹⁰ Oakwood Healthcare, *supra*, at 691.

responsibly direct within the meaning of the Act unless the individual exercises that authority utilizing independent judgment.¹¹

To exercise “independent judgment,” an employee must, at a minimum, act “free of the control of others and form an opinion or evaluation by discerning and comparing data.”¹² An act does not require “independent judgment” if “it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or the provisions of a collective bargaining agreement.”¹³ Moreover, the judgment involved must “involve a degree of discretion rising above the ‘routine or clerical.’”¹⁴ An act is routine or clerical if there “is only one obvious and self-evident choice” or if made “solely on the basis of equalizing workloads” even if the decision to act is made free from the control of others and involves forming an opinion or evaluation on the basis of discerning data.¹⁵

¹¹ Alternate Concepts, Inc., *supra*, at *12; Community Education Centers, Inc., 360 N.L.R.B. No. 17, *6 (2014) (finding that an employer failed to demonstrate that supervisors exercised independent judgment in directing employees where notices issued by supervisors to employees indicated that supervisors corrected employees in tasks such as report writing, maintaining logbooks, and filling out inspection sheets but employer failed to show that direction in these tasks is not controlled by policy and procedure or involved a degree of discretion above the merely routine).

¹² Oakwood Healthcare Inc., *supra*, at 693.

¹³ Id.

¹⁴ Id.; Loyalhanna Care Center, *supra*, at 869 (“In order to be a statutory supervisor, an employee must make decisions that are more than ‘routine or clerical’ with regard to one or more of the statutory indicia of supervisory status.”).

¹⁵ Oakwood Healthcare Inc., *supra*, at 693.

General, conclusory testimony is insufficient to establish that an individual exercises independent judgment in directing employees.¹⁶ Thus, in Brusco Tug and Barge, Inc., *supra*, at *27-*28, the Board concluded that the employer failed to present evidence sufficient to establish that mates possessed supervisory authority to select deckhands to perform specific tasks based on their skill and ability. While the employer asserted that mates had such authority, the employer presented no evidence of a mate actually doing so and offered only hypothetical situations such as where a mate might select one deckhand over another based on physical strength.

An evaluation of the evidence presented by the College and given decisive weight by the Regional Director shows that the Regional Director departed significantly from existing Board precedent by failing to apply the correct burden of proof. In finding that the College met its burden of proof to show supervisory authority, the Regional Director could have relied only upon conclusory evidence, unsupported by detailed, specific examples, like that rejected as insufficient in Brusco Tug and Barge, Inc. The Regional Director's decision should therefore be overturned.

¹⁶ See Volair Contractors, Inc., 341 N.L.R.B. 673, 674 (2004) (finding that employer failed to present sufficient evidence to show that individual exercised independent judgment to direct employees where witness testified in response to leading questions that individual's direction of other employees involved the use of independent judgment where such "conclusionary statements made by witnesses in their testimony, without supporting evidence, do[] not establish supervisory authority") (internal citations omitted); see also Croft Metals, Inc., 348 N.L.R.B. 717, 722 (2006) (concluding that employer failed to demonstrate that employees utilized independent judgment in directing employees where employer presented no evidence regarding the factors weighed or balanced in making production decisions or directing employees).

Directing Officers To Perform Investigations

In determining that the sergeants have authority to responsibly direct, the Regional Director erroneously concluded that the evidence presented by the College was sufficient to show that the sergeants exercise independent judgment in assigning police officers to conduct investigations. Specifically, the Regional Director found that the sergeants weigh various factors in assigning officers such as the nature of the offense, qualifications, expertise, and demeanor of the officers, and the relationship students have with a particular officer. Further, the Regional Director found that the sergeants exercise independent judgment in supervising investigations where they direct officers as to whom to interview, determine whether there is probable cause to conduct a search, and determine whether to contact the local police. (Decision at 13). However, the conclusory, and often unclear, evidence offered by the College with respect to investigations is insufficient under existing Board precedent to prove the sergeants exercise independent judgment, especially where that evidence is contradicted by the College's own policy regarding the conduct of investigations.

The Regional Director's conclusion that the sergeants assign officers to investigations, oversee those investigations, and do so utilizing independent judgment in assessing certain factors is based entirely upon Peterson's conclusionary testimony, which was unsupported by any detailed, specific examples. At hearing, Peterson testified that the police officers conduct investigations. (Transcript at 30:17-18). Peterson stated that the sergeants

determine which police officer conducts an investigation. (Tr. 30:19-23; 32:3-5; 147:9-12). Peterson maintained that, at times, the police officer responding to the incident conducts the investigation, while on other occasions an officer “who has a particular area of expertise”¹⁷ will conduct an investigation. (Tr. 147:12-17). At two points during the hearing, Peterson testified, generally, that sergeants evaluate a number of factors in assigning an officer to an investigation:

Q: What does the sergeant consider when assessing whether an officer is the appropriate person to conduct an investigation?

A: Their experience, the nature of the incident, the qualifications of the officer. A lot of times it could be the demeanor of the officer; that this officer has a good demeanor to carry on this investigation where somebody else may not. He’s going to decide to put that officer there.

(Tr. 32:6-12).

. . . .

Q: What factors does the sergeant consider when assigning a particular officer to an investigation?

A: He’s going to determine the nature of the offense, naturally. Is the officer competent

¹⁷ While the College has a lieutenant who acts as an investigator (Tr. 12:6-13) conducting follow-up investigations with respect to sexual assaults (Tr. 139:1-18), the College has not identified a single police officer with a particular area of investigative expertise. Thus, the evidence offered by the College fails to establish that any police officer, other than the lieutenant who acts as the sexual assault investigator, has an area of investigative expertise.

enough to do the investigation? Can he do the interview? Some type of crimes, you have a certain officer that can do a great job; others, he can't do a great job. He doesn't have the interaction. A lot of times, some of these officers have very good relationships with the students and the students can open up more to this particular officer as to another officer.

(Tr. 147:18-25; 148:1-2).

However, beyond Peterson's conclusory testimony with regard to the factors allegedly weighed by the sergeants in determining which officer to assign to an investigation, the College failed to offer any particularized, detailed evidence which could meet its burden of proof to show that sergeants either assign officers to investigations or do so utilizing independent judgment. In fact, the College failed to present any evidence demonstrating that a particular sergeant ever assigned an officer to a specific investigation, identifying a police officer's characteristics with regard to his investigative abilities, or showing that a sergeant weighed particular factors in assigning an officer to an investigation. Presumably, where the College alleges that the sergeants are responsible for assigning officers to investigations on a regular basis, such evidence would have been readily available to the College, yet none was provided.¹⁸

¹⁸ See, e.g., Avante at Wilson, Inc., supra, at 1057 (finding that record failed to substantiate Regional Director's conclusion that employer met its burden of establishing supervisory status of staff nurses to discipline on the basis of sending employees home, as testimony utterly lacked in specificity because witness failed to particularize her testimony that staff nurses could send employees home without consulting with superiors by specifying when any such incident occurred, who was involved, the circumstances surrounding the incident, and whether any higher-level managers were consulted, and a second

Other than his conclusory testimony that the sergeants assign officers to conduct investigations weighing certain factors set out above, Peterson described only a single occasion on which a sergeant allegedly assigned an officer, or officers, to conduct an investigation without identifying the sergeant or officers involved or the factors weighed or considered by the sergeant in allegedly making the assignment. He testified that the night prior to hearing "they" had a drug investigation handled by a police officer and two students were going to be charged with possession of marijuana with attempt to distribute. (Tr. 31:5-16). He asserted that an unnamed sergeant determined that the unnamed police officers involved in the incident should conduct the investigation and that "the patrolmen carried that through the investigation." (Tr. 31:5-16).¹⁹

When asked to further describe the handling of the drug investigation, Peterson testified

A: The patrolman gets -- we get a call dispatched, **I'll start with me.** One of the RAs calls and said we have an odor of marijuana on a particular residence hall. What **we do** is the patrolman will respond to that call. If he confirms that there is an odor of marijuana coming from that room, the RA or the area coordinator will come to that room. He knocks on the door, identifies himself as a police officer. He walks in and he definitely smells the marijuana. Then he'll have a discussion with the individuals in the room. If it

witness failed to provide any situations or details of circumstances of a staff nurse sending an employee home).

¹⁹ In his testimony, Peterson clearly referred to multiple patrolmen.

comes to a situation where he thinks that he's got enough probable cause to search, **he's going to call the sergeant** as well to respond, and he's going to run the whole scenario by the sergeant, and then they make a determination just how far they can go into this thing.

Q: Okay. When you talked about there being a drug investigation, that's what you're talking about?

A: Right, **well, no, because now these individuals**, they found the marijuana and brought them back to the station. They did interviews. The patrolman actually did the interviews. The supervisor, the sergeant, oversaw the interviews, but the patrolman was allowed to do the interviews and gain some additional information of where the source, where they're getting it from, and go from there.

Q: And so the person who discovered, who went in and saw -- that participated in this initial investigation, he was the one that interviewed the --

A: He carried it through, yes.

Q: He carried it through.

A: Yes, he did, under the supervision of the sergeant. **He'd go back to the sergeant or the sergeant was there. I just glanced at the report real quick this morning.** But **usually he consults** with the sergeant as far as --

(Tr. 136:7-25; 137:1-16 (emphasis added)).²⁰ Clearly, the bulk of Peterson's explanation of the incident was hypothetical in nature. Peterson did not describe what actually happened, but how a hypothetical police officer "would" respond to a drug call. Peterson even acknowledged that he had no first-hand knowledge of the event, as he simply "glanced" at the report that morning "quickly." Peterson's assertion that the sergeant "supervised" the investigation is also clearly based on an assumption. Peterson testified that the either the police officer would "go back to the sergeant or the sergeant was there" because police officers "usually . . . consult[] with the sergeant."²¹

With respect to the sergeants' role in supervising investigations beyond his speculative drug incident testimony, Peterson suggested that a sergeant would advise the police officers whether probable cause existed to take an

²⁰ The factual conclusions drawn by the Regional Director from Peterson's testimony about this incident are clearly erroneous. The Regional Director found that "[a] police officer responded to a call regarding the odor of marijuana coming from a dorm room. The officer called the sergeant, and the two of them found probable cause to search the room The police officer interviewed the students under the supervision of the sergeant." (Decision at 6). Peterson's testimony regarding the incident is entirely unclear and the Regional Director could not fairly draw such conclusions from the convoluted, partially hypothetical scenario described by Peterson. Peterson testified that multiple patrolmen were involved in the incident initially and used "they" multiple times without identifying whether "they" meant the police officers or the police officers and the sergeant. Further, Peterson's testimony fails to show that the sergeant supervised the interview. Peterson simply stated that the sergeant was there or the patrol officer consulted with the sergeant because that was what "usually" would have occurred under the circumstances.

²¹ Notably, although Peterson testified that the unnamed sergeant assigned the police officer (or officers, as he first indicated) to conduct the investigation, those officers responded to the incident and, under College policy, were responsible for conducting the investigation without any assignment as discussed infra at 16-17.

investigation further in terms of entering another room or questioning another individual. (Tr. 136:20-25; 137:1). Further, Peterson testified that officers “follow through” on theft investigations in reviewing surveillance footage. (Tr. 31:20-25). Peterson indicated that in the case of malicious theft or a fire call, “the sergeant **might** instruct the patrolman to go back, [and] review the cameras. . . .” (Tr. 140: 9-18 (emphasis added)). Peterson further stated with respect to the review of camera footage: “Some of these guys are very diligent and very proficient at that A lot of times they’re going to find who did it that way. And they follow through. They call a person in, get a statement from them.” (Tr. 140:9-18).²² Nevertheless, the College failed to identify a single, specific incident where a sergeant ever assessed probable cause, instructed a particular officer to interview a certain witness, or assigned an officer to complete a theft investigation. Despite the Board’s clear precedent, no specific, detailed evidence identifies the factors weighed or considered by the sergeant in evaluating probable cause, instructing an officer to interview a particular witness, or assigning an officer to review surveillance footage.

Nor is the Regional Director’s conclusion that the sergeants utilize independent judgment in assigning and supervising investigations supported by the evidence offered by the College with respect to sexual assault investigations. Peterson testified that in the case of a sexual assault, the responding officer would handle the immediate response to the call and then

²² Indeed, Peterson’s testimony with respect to the review of camera footage implies that the officers, without any direction, identify and interview any identified suspects.

the lieutenant, who is the sexual assault officer, would conduct the remaining follow-up investigation. (Tr. 139:1-18). Only an officer certified in investigating sex assaults (see Tr. 138:22-25) may conduct a sexual assault investigation. (Tr. 148:8-13). In fact, Peterson characterized a sergeant contacting an officer certified in undertaking sexual assault investigations to conduct such an investigation simply as “mak[ing] sure that the round peg is in the round hole.” (Tr. 31:1-3). Assigning an officer certified in sexual assault investigation to conduct those investigations, especially where the College’s *lieutenant* is charged with conducting follow-up sexual assault investigations,²³ requires the sergeants to make only an obvious and self-evident determination which does not rise above the merely routine or clerical under Board precedent.²⁴

The Regional Director’s error in concluding that the evidence presented by the College met the Board’s usual burden of proof is all the more obvious because Peterson’s testimony on the subject is largely contradicted by the Department’s own investigations policy.²⁵ Evidence which is in conflict does

²³ Again, the College presented no evidence identifying any occasion on which a sergeant assigned a sexual assault certified officer to conduct a sexual assault investigation or contacted the lieutenant who acts as the sexual assault investigator without the input of a higher authority.

²⁴ See Oakwood Healthcare Inc., supra, at 693.

²⁵ The Department is one of only a limited number of college and university police departments accredited by the state Accrediting Authority in Massachusetts. (Tr. 18:1-2, 13-18). As such, the Department must follow a set of approximately 300 “standards” established by the Accrediting Authority. (Tr. 18:7-12) Those 300-odd standards are incorporated into the policies of the Department. (Tr. 115:14-19). Every three years, the Accrediting Authority reviews the Department’s policies and performs an audit to ensure that the

not prove supervisory status.²⁶ The College's policy provides that preliminary investigations are the responsibility of the police officers with the first officer arriving on the scene in charge of the investigation unless relieved by a supervisor. (Union Exhibit 2, at Sections VI(A) & VI(E)). The officer conducting the investigation is responsible for locating and interviewing witnesses and the complainant and must do so whenever possible. (Union Exhibit 2, at Section VI(E)). The initial officer yields the investigation only when requested to do so by the officer in charge or upon the arrival of a detective assigned through proper authority to take over the investigation. (Union Exhibit 2, at Section IX(A)). The Chief or Deputy Chief, not a sergeant, is responsible for assigning investigative personnel to conduct the investigation of unusually serious or complex crimes (Union Exhibit 2, at Section VI(B)), and the Deputy Chief is charged with assigning follow-up investigations. (Union Exhibit 2, at Section X). Thus, the responding officer is automatically "assigned" to investigate an incident and is authorized to "follow through" with the investigation, by locating and interviewing witnesses, without any direction from a sergeant, under Department policy.²⁷ Peterson testified that, to the extent applicable, his department follows the investigations policy. (Tr. 146:20-22).

Department is adhering to its policies. (Tr. 124:9-25; 125:1-2). Officers are responsible for reviewing and electronically signing each policy. (Tr. 8-20).

²⁶ Brusco Tug and Barge, Inc., supra, at *18.

²⁷ The policy further provides that the officer assigned to the patrol area in which the complaint originated will be assigned the case and investigators will be assigned cases based on their knowledge, skills, and qualifications. (Union Exhibit 2, at Section III(A)). The College identified only one sort of investigator

Finally, the Regional Director concluded that the sergeants utilize independent judgment where they determine whether or not to contact the local police department about a certain crime. Peterson testified that the sergeant determines when to contact local police with respect to an incident. (Tr. 137:2-5). However, by policy, all serious crimes must be referred to the local police. (Tr. 148:20-25; 149:1-8). Again, in any event, conflicting evidence is insufficient to meet an employer's burden of proving supervisory status. Further, even if the sergeants utilized some limited discretion in contacting local police, the reporting of crimes to police departments in no way implicates the direction of College employees.

Directing Officers To Transport Arrested Students

The Regional Director likewise departed from Board precedent in concluding that the evidence is sufficient to demonstrate that the sergeants utilize independent judgment in assigning officers to transport students who have been arrested to local police stations. Transporting a student to the police station does not require specialized skill or knowledge and is a part of the police officers' routine duties. Students arrested on campus must be transported either to the North Andover or Andover police department. (Tr. 36:23-25). Peterson testified that a sergeant decides which officer transports the arrestee to the police department. (37: 3-5). Peterson indicated that the sergeant, in making that determination, would consider a number of factors:

– a sexual assault investigator – who is a lieutenant, i.e., not an employee under the command of a sergeant.

Again, a particular officer that makes the arrest may be one that for whatever reason he's more experienced. He has, again, a better demeanor. He may want him to stay on campus to assist and instead of sending the arresting officer with him, he'll send somebody else that he knows might be better served being with the prisoner.

(Tr. 37:8-14). One officer is required to transport a student to a police station.

(Tr. 37:1-2). However, Peterson indicated that a sergeant "may" send two officers if the arrestee is "disorderly" or "still acting up in the back of the car."

(Tr. 37:15-19).

No further evidence addressed the role of sergeants in assigning officers to transport students to local police stations. Thus, in reaching his conclusion, the Regional Director necessarily relied on the sort of general, conclusory evidence consistently found by the Board insufficient to prove supervisory status. While Peterson testified generally that the sergeants weigh particular factors in assigning officers and determining the number of officers to assign to transport arrestees, the College failed to offer detailed evidence regarding even a single occasion on which a sergeant selected another officer or officers to transport a student to a police station, or the factors actually considered by the sergeant in making that determination. Such evidence should have been easily identifiable and readily available to the College where, presumably, the College documents arrests and the transport of arrestees. Peterson's conclusory testimony, unsupported by any specific examples, that sergeants weigh a variety of factors in selecting officers to transport students does not meet the

Board's standard of proof and cannot support a finding of supervisory authority.

Deploying Officers During Events That Generate Large Crowds

The Regional Director found that the evidence presented at hearing was sufficient to show that the sergeants utilize independent judgment in deploying officers during events that generate large crowds, where the sergeants determine whether to have officers disperse large crowds, direct officers to either arrest or issue trespass notices to disorderly individuals, and determine whether to deploy officers to assist with traffic. Once again, the conclusory testimony offered by the College is devoid of any detailed, specific examples of such authority which could support its burden of proof, especially where these activities make up the regular, routine duties of police officers.

Monitoring the grounds and overseeing crowd control are merely routine aspects of the police officers' duties. (See Employer Exhibit 16).²⁸ Peterson testified that if the College has an incident with a large crowd or a large group, a sergeant "will assign" an officer to check the particular area:

From time to time, if we have an incident where there is a large crowd or a large group and we've had a disturbance, the shift supervisor will assign an officer or two officers to check that particular area and make – he could even assign somebody to that area to monitor it.

²⁸ "Supervise crowd control at college events" and "Patrol of college buildings and grounds to ensure the safety of people and security of buildings and other property" are among the police officers' job duties. (Employer Exhibit 16 at 2).

(Tr. 28:16-21). Peterson further testified that the sergeants could advise officers to check on specific areas of campus but acknowledged that he and the Chief notify the sergeants regarding particular areas to check during a shift by email or otherwise. (Tr. 27:18-25; 28:1). Nonetheless, the College did not identify any instances where a sergeant directed an officer to monitor or check a specific area. Further, the College failed to identify any factors a sergeant might weigh in directing a specific employee to check or monitor a specific area, let alone provide specific, detailed evidence of the specific factors considered by a particular sergeant in deploying officers for crowd control purposes.

In the same vein, Peterson testified that a sergeant could, hypothetically, assign officers to assist with traffic during events, such as hockey or football games or to monitor residential areas on campus having parties:

We have hockey games on the weekends. We have football games where we have an overabundance of students on campus. Like I said, Halloween, we had over 300 registered guests and we probably had another 300 that weren't registered. So it's a very busy time and there's a lot of things going on, so he **may assign** another officer to assist with the traffic, **if** the traffic was backing up out onto the highway. He **may** assign officers to monitor residential areas if they're having parties.

(Tr. 36:6-14) (emphasis added). However, Peterson again failed to identify any specific occasion on which a sergeant had ever assigned officers to assist with traffic or monitor parties or produce evidence of the factors actually weighed by

a sergeant in making such an assignment. Assisting with traffic, like monitoring the College's grounds, is a routine part of the police officers' duties. (See Employer Exhibit 16).²⁹

Peterson further indicated that "spring weekend," occurring at some unknown time last spring, was an occasion where "**we** had so many areas that **we** had to assign officers to and the sergeant was overall responsible to send officers to those and address those issues." (Tr. 36:14-17) (emphasis added). Peterson did not identify any sergeant or sergeants involved, the locations where officers were assigned, or the officers assigned to those locations. Where no information was provided with respect to the parties involved in making spring weekend assignments, it is impossible under existing Board precedent for the Regional Director to reach the conclusion that any sergeant utilized independent judgment in assigning officers to particular locations. Indeed, it is unclear based on Peterson's testimony whether *any* sergeants or *any* stipulated supervisors ever evaluated the need to have officers stationed at particular locations during spring weekend.

As a part of their regular, routine duties, police officers are charged with enforcing the "General Laws of Massachusetts, town by-laws, and college regulations and policies." (Employer Exhibit 16, at 2). "Quiet hours" begin on the College campus at 1:00 a.m. and all loud music and activity must cease at that time. (Tr. 28:22-25). All officers assist in enforcing "quiet hours." (Tr. 28:22-25). Peterson indicated that the sergeant "will get everybody together" to

²⁹ The police officers' job duties specifically include "Assist with vehicular and pedestrian traffic." (Employer Exhibit 16).

disperse the crowd from one particular area where a large group of students congregate. (Tr. 29:5-6, 10-12). Peterson testified, without elaboration, that the sergeant determines where the officers go with respect to quiet hours enforcement. (Tr. 29:10-12). Without ever identifying a specific area to which an officer might be assigned, Peterson simply stated, "Some may go to one location. Some may go to another." (Tr. 29:5-6). Peterson did not identify even a single occasion on which a sergeant directed an officer to enforce quiet hours in a specific location, much less any factors a sergeant has considered in selecting which officer to send to a particular location to enforce quiet hours.

Further, the record evidence simply does not support the Regional Officer's finding that an "unnamed sergeant decided to have the officers issue trespass notices to 10 to 15 disorderly non-students rather than arrest them" in light of "the size and demeanor of the crowd, the atmosphere, and the number of officers on duty." (Decision, at 5). Rather, the evidence necessarily relied on by the Regional Director reveals, at most, that a sergeant issued trespass notices to 10 or 15 individuals without at all involving police officers. Peterson offered the following testimony at hearing with respect to this incident:

A: I'll go back to Halloween as the most recent example. We probably could have arrested 10 or 15 individuals for disorderly, but that would have meant we wouldn't have any manpower on campus because they would all have been going to the police station. So what we did that particular night instead, we issued them trespass notices and we escorted them off the campus.

Q: Who made that decision to issue trespass notices?

A: The sergeant. It was a very wise decision to make.

Q: And what sort of factors does the sergeant consider when making that type of decision?

A: The size of the crowd, the atmosphere, the demeanor of the crowd, and the amount of officers he has on duty.

(Tr. 38:3-24). Thus, the testimony offered at hearing reveals that the sergeant decided to issue trespass orders to the non-students, not that the unnamed sergeant directed any unnamed officers to issue those orders. Where the Regional Director apparently relied on the erroneous factual conclusion that the sergeants utilized independent judgment in directing officers to issue trespass orders, that error clearly prejudiced the Union.

Moreover, the conclusory evidence offered by Peterson failed to demonstrate that a sergeant would even utilize independent judgment in determining to issue trespass orders. Peterson, again, testified generally regarding the factors a sergeant could consider in issuing a trespass order and the College presented no evidence of any factors actually evaluated by the sergeant under the circumstances. The College did not offer any other detailed, specific evidence with respect to the issuance of trespass orders. Even assuming that the sergeant's decision to issue trespass orders alleviated the need to transport arrestees to police stations and further assuming that the sergeant may have evaluated certain factors in making that decision, his

decision did not involve the direction of employees of the College or implicate any of the twelve supervisory functions.

**Selecting Officers Who Work Well With The
Public For Certain Assignments**

The Regional Director's erroneous conclusion that the sergeants have authority to responsibly direct officers was based, in part, on a finding that the sergeants exercise discretion in selecting officers who work well with the public for certain assignments, such as checkpoints and in the bar area and in pairing more experienced officers with less experienced officers for certain assignments. However, the evidence presented by the College was far too general to permit the Regional Director to conclude that the sergeants exercise independent judgment in assigning officers, based upon a consideration of their relative skills, to the checkpoint and bar area.

The Department sets up a "checkpoint" on Friday and Saturday nights from 7:00 p.m. to 11:00 p.m., stopping vehicles at the entrance of the residential area of the campus. (Tr. 28:5-15; 33:11-20; 34:8-10). Any police officer can work the checkpoint. (Tr. 35:7-10). When asked what a sergeant considers in assigning officers to checkpoints, Peterson responded, "I think he tries to do it in a fair and equitable manner." (Tr. 34:5-7). Peterson further explained that it was the practice to rotate the officers assigned to the checkpoint every two hours:

HEARING OFFICER SWITZER: Is that
 usually the practice is to try to get
 someone to rotate in every two hours?

A: Yes, Sir. For the most part, I think most sergeants do that.

(Tr. 34:18-21; see Tr. 34:11-17). Then, only in response to leading questions by counsel, did Peterson indicate that the sergeants consider officers' experience in conducting checkpoints in making assignments:

Q: Does the sergeant consider the officer's experience in conducting checkpoints when making the assignments?

MR. HICKERNELL: Objection, leading.

HEARING OFFICER SWITZER: Overruled.

A: I think the officer (sic) is going to put somebody there that he knows is going to effectively communicate with the people coming onto the campus.

HEARING OFFICER SWITZER: Is it fair to say that any patrol officer could do a checkpoint.

A: Any officer could do it. I **think** the sergeant's discretion is he's going to get **probably** the officer that he knows is going to communicate the intent of what they want done better. So it's like any profession, you know, you have some people that can interact with people a lot better than other people can. And that's important. **We try** to maintain a positive image. **We're** dealing with college kids and **we don't want somebody** there that's going to upset the apple cart, so to speak.

HEARING OFFICER SWITZER: Yeah I understand. I understand what you're saying.

Q: Are checkpoints set up during parents' weekend?

A: Yes, it was.

Q: Is that an example of a time where you would want an officer with particularly good people skills?

A: Yeah, public relations and community policing is very important to **us**.

(Tr. 34:23-25; 35:1-24). Other than Peterson's testimony that he "thought" the sergeants would consider the communication skills and personalities of the officers in making checkpoint assignments, the College offered no evidence identifying a single occasion on which a sergeant assigned an officer to a checkpoint based on his or her communication skills.³⁰ Peterson's vague testimony does not even establish that a sergeant assigned an officer to work at the checkpoint on Parents' Weekend. Instead, the evidence presented by the College confirms that the sergeants do not exercise independent judgment in assigning officers to checkpoints. Under existing Board precedent, assigning officers to equalize workloads is merely routine or clerical and does not involve the use of independent judgment.³¹

Indeed, the record evidence identifies only one occasion on which a sergeant assigned officers to work at the checkpoint. Peterson indicated that he drove by the checkpoint while returning from a detail and observed two officers working the checkpoint, Officers Taylor and Hughes, sitting inside a car. (Tr. 61: 6-9). Peterson testified that he contacted Sergeant Furlong to

³⁰ Instead, Peterson's testimony reveals, at best, that the Department emphasizes the importance of good public relations to all of its officers as a part of its community policing policy.

³¹ Oakwood Healthcare Inc., supra, at 693.

correct the officers (Tr. 61: 21-23; 62: 20-24). In response, Furlong emailed Peterson writing, in part,

In regards to the issue at the check point regarding the Officer sitting in the cruiser I did the following. After your phone call I went to the check point and Officers Hughes and Taylor were out in the roadway. I had Officer Hughes work with Officer Taylor because I knew that Officer Hughes has more experience with the check point.

(Employer Exhibit 8). After reviewing the email, when asked if sergeants consider experience when assigning officers to checkpoints, Peterson replied,

A: Yes. Officer Taylor was fairly new. And it would be the discretionary – the proper thing to do would be to have the sergeant assign a more experienced officer with the less experienced officer to try to show him the right ways to do the detail, I mean the assignment, instead of sitting in the car.

(Tr. 62:10-16). Thus, while Sergeant Furlong's email indicates that he assigned a more experienced officer with Officer Taylor on the checkpoint, Peterson confirmed that Taylor was a new officer and that it was "proper," that is, routine or expected, to assign another officer to mentor him.³² Other than Furlong's email discussing the single checkpoint assignment, which is, at best, inconclusive with respect to the sergeants' use of independent judgment, the College has not identified any specific occasion on which a sergeant assigned

³² Peterson notably corrected his statement that it would be "discretionary" for an officer to assign a new officer with an experienced officer to indicate that it would be proper, thus, indicating that an officer would not have discretion in making such an assignment. Pairing new officers with experienced officers appears to require no more than a routine or ordinary judgment.

specific officers to the checkpoint, much less presented evidence which would permit the Regional Director to conclude that the sergeants utilize independent judgment in assigning officers to checkpoints.³³

The Deputy Chief, lieutenants, sergeants, campus police officers, and the campus safety officer can work details on campus for specific events. (Tr. 117:7-13). If a detail requires multiple officers, the highest-ranking officer is designated as the Officer In Charge (“OIC”) of the detail and assigns the other officers present to posts. (Tr. 41:23-25; 42:1). Peterson testified that if a detail requires four or more officers, one of those officers must be a sergeant although that requirement is not contained in any one of the Department’s voluminous policies. (42:6-10; 128:16-25; 129:1). The College, however, presented no evidence establishing the frequency that the Deputy Chief, lieutenants, or sergeants work details and no evidence establishing the frequency that a sergeant works a detail in the absence of a higher-ranking officer was presented at hearing. Thus, the College has offered no evidence which would allow the Regional Director to determine how often a sergeant even served as OIC where a higher-ranking officer would assume that position if present on a detail. (Tr. 42:15-17).³⁴

³³ See Lynwood Manor, *supra*, at 490 (finding testimony of LPN who stated she had to determine staffing needs based on assessment of patient acuity, oral report, and the 24-hour report, where employer did not otherwise introduce evidence regarding the factors weighed or balanced by the nurses, was purely conclusory and not sufficient to establish that nurses exercised independent judgment in assigning employees).

³⁴ Thus, the Regional Director’s finding that when “there are three or more officers on a detail, a sergeant generally serves as the officer-in-charge, unless

The College failed to present any detailed, specific evidence establishing that a sergeant ever assigned particular officers to certain posts at details. Peterson testified that he recently worked a detail with a sergeant and allowed him to act as officer-in charge. (Tr. 42:19-23). Peterson did not identify the sergeant, identify the number of officers working the detail, discuss any assignments made by the sergeant, or offer any testimony that could establish that the sergeant evaluated the skills and abilities of the officers in making any assignments. Nonetheless, the Regional Director concluded that sergeants consider the communication skills of officers in utilizing independent judgment to assign officers to the bar area on details. This conclusion was either manifestly erroneous, the result of an application of the incorrect burden of proof, or both.

Peterson testified that the sergeants generally consider fairness when making assignments on a detail. (Tr. 43:20-25; 44:1-2). Peterson, however, indicated that when assigning officers to bar areas on details, such as at hockey games or homecoming,

Peterson serves in that capacity” is not supported by the evidence. (Decision at 5). The lieutenants also serve as officer-in-charge when present at details and no evidence establishing the frequency that a sergeant works a detail in the absence of a higher-ranking officer was presented at hearing. Even a patrol officer can serve as an Office-In-Charge (“OIC”) (Tr. 41:19-25; 42:1), much as patrol officers regularly serve as shift supervisors in the absence of a sergeant. (Tr. 22:2-6; 118:17-25; 119:1-6). Where police officers can serve as OICs in the absence of a higher-ranking officer, both on shift and at details, it is unlikely that OICs are called upon to make more than routine determinations. The OICs, like the sergeants, are required to review and abide by 300 standards incorporated into the Department’s policies and procedures, which govern the Department’s operations. (Tr. 45:3-20).

The sergeant is going to put somebody there that he knows can interact, as a good personality, doesn't reflect certain attributes that we don't want people to feel as if they're intimidated or you know it's a public relations thing. That's very important in campus public safety.

(Tr. 44: 6-21). Other than Peterson's conclusory testimony, no record evidence exists to suggest that assigning officers to posts at details would constitute more than a routine determination or that a sergeant has ever considered the skills and abilities of the particular officers on a detail in making assignments to posts. The College has not identified a single instance in which a sergeant assigned an officer to a bar area after evaluating that officer's personal characteristics.³⁵ Thus, the evidence presented by the College with respect to assigning officers to bar areas was, again, insufficient to permit the Regional Director to conclude that the sergeants direct employees utilizing independent judgment.³⁶

³⁵ Further, the College admittedly utilizes North Andover police officers to work details in the on-campus pubs. (Tr. 117:19-23). There is no evidence as to the command relationship between non-College detail officers and the College's sergeants, or as to any familiarity the College's sergeants may have with regard to the non-College officer's individual characteristics.

³⁶ See Network Dynamic Cabling, Inc., 351 N.L.R.B. 1423, 1425 (2007) (finding employee lacked authority to assign where no evidence existed to demonstrate that the individual assessed the relative skills of the employees in making assignments).

C. The Regional Director Erroneously Concluded That The Evidence Presented By The College At Hearing Could Prove That The Sergeants Are Accountable For The Performance Of Their Subordinates.

The Regional Director applied the wrong burden of proof in finding that the College's sergeants are sufficiently "accountable" to demonstrate that they responsibly direct police officers. Direction is "responsible," if the person directing and performing the oversight of an employee is accountable for the performance of a task, meaning that some adverse consequence may befall the purported supervisor if the employee does not perform the task properly.³⁷ To establish accountability, a party must show not only that the employer delegated the authority to direct the work to the purported supervisor and the authority to take corrective action³⁸ if necessary, but also that there is the prospect of adverse consequences for the purported supervisor if he does not take those steps.³⁹ Accountability may be established by showing that a purported supervisor has experienced "material consequences, either positive or negative, as a result of directions given to others."⁴⁰ However, evidence

³⁷ Oakwood Healthcare Inc., *supra*, at 692.

³⁸ See Community Education Centers, Inc., *supra*, at *3-*4 (finding that individuals had authority to take corrective action where they could report deficiencies in employees' performance to a disciplinary committee which would forward information to the corporate office for final decision).

³⁹ Oakwood Healthcare Inc., *supra*, at 692.

⁴⁰ Alternate Concepts, Inc., *supra*, at n.12; see also Croft Metals, Inc., *supra*, at 722 (finding that written warnings issued to lead persons because of the failure of their crews to meet production goals or because of shortcomings of the crews demonstrated that they were accountable for the purposes of

demonstrating that a purported supervisor is accountable for his or her own performance, rather than the performance of others, fails to establish that the purported supervisor engages in responsible direction.⁴¹

The sparse evidence offered by the College with respect to the sergeants' "accountability" consisted entirely of discipline or emails issued to the sergeants based on their own shortcomings or emails instructing the sergeants to correct the performance of the police officers without any indication that the sergeants suffered any sort of "adverse consequences" for the performance of the officers even where the officers were blatantly neglecting their duties. While the Regional Director noted that Department policy (Employer Exhibits 1 & 2) indicates that sergeants are accountable for the performance of the employees under their immediate control, to show that an employee is accountable for the actions of his or her subordinates under existing Board precedent, a party must demonstrate that such a prospect exists by more than a paper showing.⁴² Here, the College failed to adduce the sort of evidence sufficient for the Regional Director to find, in applying the appropriate burden of proof, that the sergeants' accountability existed beyond the statements

responsible direction where they instructed employees on how to perform jobs properly, told employees how to load trucks, or instructed employees on what tasks to perform first to ensure that orders were filled and production completed in a timely manner).

⁴¹ Oakwood Healthcare Inc., *supra*, at 695; *see also* Community Education Centers, Inc., *supra*, at *5 (finding no evidence of prospect of adverse consequences where disciplinary and supervision notices and evaluations concerned only supervisors' own poor performance rather than that of their subordinates).

⁴² Golden Crest Healthcare Center, 348 N.L.R.B. 727, 731 (2006).

contained in the College's policies. The Regional Director's decision with respect to the supervisory status of the sergeants should be vacated on that ground alone.

In finding that the sergeants are accountable for the performance of their subordinates, the Regional Director cited a single written warning issued to a sergeant, and a number of emails sent from the Deputy Chief to the sergeants. On March 26, 2011, Sergeant Abdallah received a written warning for "failure to supervise building checks." (Employer Exhibit 7). Peterson testified that the written warning resulted from an incident where the day shift discovered that the doors of three buildings on campus were left unsecured overnight. (Tr. 57:7-9). According to a memorandum, Abdallah was assigned to work the 3:00 p.m. to 11:00 p.m. shift the evening before the day shift discovered the doors unsecured. (Employer Exhibit 6). Sergeants are required to verify that officers have performed building checks as a part of their own duties. (Tr. 26:5-13; 57:10-13). No evidence exists establishing how sergeants confirm that police officers have performed building checks; however, police officers call the dispatcher upon checking a building and that information is entered into the daily log. (Tr. 29:13-22). Where Abdallah's duties included verifying that the police officers had checked the buildings and the written warning was issued based on his failure to ensure that the buildings had been checked, the written warning derived from Abdallah's failure to perform his own duties rather than the shortcomings of his subordinates. Notably, an entire shift elapsed between the end of Abdallah's shift at 11:00 p.m. and the discovery of the

unlocked doors at 7:00 a.m. The College presented no evidence to suggest that any “supervisor” was disciplined or otherwise warned regarding the failure of the midnight shift to adequately check the buildings where they, too, necessarily failed to discover that the buildings were left unsecured.

The Regional Director wrongly concluded that certain emails directing the sergeants to correct the police officers’ performance showed that the sergeants were “accountable.” The College presented an email, noted above, in which Sergeant Furlong replied to Peterson after Peterson had called to instruct Furlong to correct the officers’ performance after Peterson had discovered the officers ignoring their duties at the checkpoint. (Employer Exhibit 8). No evidence exists to suggest that any adverse consequences befell Furlong even where Peterson found the officers clearly neglecting their duties. Similarly, Peterson emailed Sergeant Abdallah inquiring about officers allowing students to fill out overnight passes during Abdallah’s shift, although that communication was principally related to Abdallah’s own mishandling of the issuance of a parking pass. (Employer Exhibit 9). Peterson testified that following the email, Abdallah corrected the issue regarding the passes. (Tr. 64:5-7; 65:23-25; 66:1-5). Thus, no adverse consequences befell Abdallah as a result of the communication with Peterson.⁴³ The Regional Director could not

⁴³ The Regional Director also could not have found that a memorandum sent by Sergeant Abdallah to Peterson about a complaint about a locked gate showed that the sergeants are “accountable” for the officers on their shifts. (Employer Exhibit 10). Abdallah clearly describes his own actions in response to Peterson’s request for an explanation of the events at issue and Peterson was inquiring with regard to Abdallah’s own deficient performance.

properly conclude that these instructions to the sergeants to correct the performance of the officers established any prospect of adverse consequences for the sergeants. While Peterson testified that the sergeants “would have been written up” if they failed to correct the officers performance, (Tr. 56:9-15; 52:14-24), the College presented no evidence to suggest that a sergeant has ever received discipline or a “write up” after failing to correct the performance of the officers on his shift with respect to any particular issue. Peterson’s conclusory testimony that the sergeants would receive discipline for failing to correct the performance of the officers is not supported by any detailed, specific evidence in the record, and thus does not meet the standard of proof demanded by the Board to exclude employees from the protections of the Act.⁴⁴

Moreover, the Regional Director could not have properly relied on the series of emails (Employer Exhibits 3, 4, & 5) regarding the sergeants’ failures to review and correct officers’ reports appropriately to conclude that the College met its burden to show that the sergeants had the requisite “accountability.” Sergeants, as a part of their own duties, are responsible for reviewing and correcting incident and arrest reports prior to the conclusion of their shifts to ensure that those reports comply with departmental policy. (Tr. 48:22-25; 49:1-7). Thus, the emails relate to the failure of the sergeants to perform their own duties, rather than the shortcomings of the police officers in report writing. Evidence demonstrating that a purported supervisor is accountable

⁴⁴ Indeed, no evidence exists to suggest that Abdallah was ever instructed to correct the performance of the police officer with respect to building checks prior to his receipt of the written warning discussed above.

for his or her own performance, rather than the performance of others, fails to establish that the purported supervisor engages in responsible direction.⁴⁵ Further, Peterson confirmed that he did not take disciplinary action against any sergeant regarding the issues described in those emails. (Tr. 56:1-16). Other than receiving an email from Peterson reminding them of their responsibilities, the College has not shown that any “adverse consequences” befell the sergeants as a result of their failures to review reports appropriately. The College utterly failed to meet the Board’s standard of proof with regard to responsible direction by putative supervisors, and the Regional Director’s decision must therefore be vacated.

IV. CONCLUSION

In finding that the College’s sergeants possess supervisory authority within the meaning of the Act, the Regional Director departed from officially reported Board precedent because the evidence presented by the College, and relied upon by the Regional Director, was not sufficient to satisfy the College’s burden of proof. As set forth above, the Regional Director relied upon only conclusory testimony, lacking any detailed supporting evidence, and improperly utilized general, vague evidence to reach erroneous factual conclusions in finding that the sergeants exercise independent judgment in responsibly directing employees with respect to investigations, transporting arrestees, and deploying officers, and selecting officers who work well with the

⁴⁵ Oakwood Healthcare Inc., *supra*, at 695; *see also* Community Education Centers, Inc., *supra*, at *5.

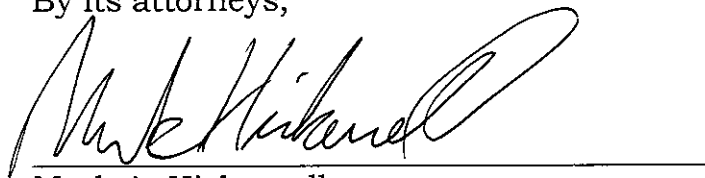
public for certain assignments. Such evidence is insufficient to prove supervisory status under existing Board precedent. Further, the evidence offered by the College, and cited by the Regional Director in his decision, to show that the sergeants are accountable for the performance of the police officers was similarly conclusory and lacking the sort of detail necessary to sustain the College's burden of proof, if properly applied, to prove supervisory status under Board law. Finally, many of the Regional Director's findings are manifestly erroneous and prejudicial to ACOPS.

Based on the forgoing, ACOPS respectfully requests that the Board vacate the Regional Director's Decision as it pertains to the supervisory status of the sergeants and find that the sergeants are properly included in the petitioned-for collective bargaining unit.

Respectfully submitted,

On behalf of the American Coalition of
Public Safety,

By its attorneys,

A handwritten signature in black ink, appearing to read "Mark A. Hickernell", is written over a horizontal line.

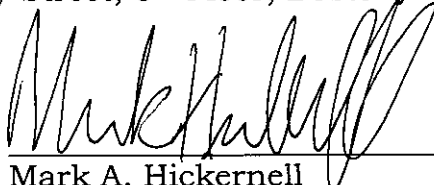
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Date: December 18, 2014

CERTIFICATE OF SERVICE

I, Mark A. Hickernell, hereby certify that I have this day by PDF E-Mail (david.santeusanio@hklaw.com) served a copy of the foregoing Request For Review Of The Regional Director's Decision and Direction of Election upon David J. Santeusanio, Esq., Holland & Knight, LLP, 10 St. James Avenue, Boston, Massachusetts 02116 and have filed a copy of the foregoing Request For Review with Jonathan B. Kreisburg, Regional Director, Region 1, National Labor Relations Board, 10 Causeway Street, 6th Floor, Boston, Massachusetts, 02222.

Dated: December 18, 2014



Mark A. Hickernell